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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,614	10/17/2003	Kelcy L. Warren	ETG:1003RCE	2439
34725	7590	02/03/2009	EXAMINER	
CHALKER FLORES, LLP			BORISSOV, IGOR N	
2711 LBJ FRWY				
Suite 1036			ART UNIT	PAPER NUMBER
DALLAS, TX 75234			3628	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/688,614	Applicant(s) WARREN ET AL.	
	Examiner Igor N. Borissov	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-13,15-30,33-43,45-66,69-78 and 80-94 is/are pending in the application.
- 4a) Of the above claim(s) 20-29,50-65 and 85-94 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-13,15-19,30,33-43,45-49,66,69-78,80-84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/19/2009 has been entered.

Response to Amendment

Amendment received on 01/19/2009 is acknowledged and entered. Claims 20-29, 50-65, 85-94 have been withdrawn. Claims 2-3, 14, 31-32, 44, 67-68, 79 have been canceled. Claims 1, 5, 15, 16, 18, 30, 36, 45, 46, 48, 66, 80, 81, 83 have been amended. Claims 1, 4-30, 33-66, 69-94 are currently pending in the application.

Remarks

Claims 67-68 and 81 have an incorrect claim identifier. Applicant is advised to correct said claim identifiers in accordance with Revised Amendment Practice 37 CFR § 1.121.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-13, 15-19, 30, 33-43, 45-49, 66, 69-78, 80-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mistr, Jr. (US 6,153,943) in view of Aasen et al. (US 4,802,100).

Mistr, Jr. teaches a method, system and a computer-readable medium having instructions embedded therein for causing a computer to implement said method for selecting a power source to a device, comprising:

Claims 1, 30 and 66,

(a) analyzing market and operational data related to the two or more available power sources, and the device or delivery point (Fig. 1 items 35 and 36; C. 13, L. 6-11, 21, 31-32; C. 17, L. 12-14); wherein the two or more available power sources are connected to the device or delivery point via one or more switches or couplings;

(b) selecting the power source for the device or delivery point from the two or more available power sources based on a set of financial parameters (C. 13, L. 37-40);

(c) whenever the device or delivery point is not already connected to the selected power source, determining whether it is profitable to switch the device or delivery point to the selected power source (based on historical operating data, current operating data, contract data, market data and financial data), sending one or more signals to switch the device or delivery point to the selected power source (operating system by a computer in an automatic mode indicates "signal" feature; C. 13, L. 37-44).

Mistr, Jr. does not specifically teach that said two or more available power sources comprise two or more mechanical sources. However, as evidenced by Mistr, Jr. (Fig. 1, item 35), it is known that a power source include a power generator/mechanical source (Fig. 1, item 35). Therefore, it would have been prima face obvious to one having ordinary skill in the art at the time the invention was made to modify Mistr, Jr. to include said two or more available power sources (Fig. 1 items 35 and 36) comprise two or more mechanical sources, as suggested in Mistr, Jr., because one of ordinary skill in the art would have recognized that applying the known technique - a power generator/mechanical source, as evidenced by Mistr, Jr. would have yielded predictable results and resulted in an improved system. It would have been recognized that applying additional power generator/mechanical source to Mistr, Jr. would have yielded predictable results because the level of ordinary skill in the art demonstrated by

the reference applied shows the ability to incorporate such power generator/mechanical source. Further, applying additional power generator/mechanical source to Mistr, Jr. would have been recognized by one of ordinary skill in the art as resulting in an improved system that would allow more reliable operation as using well known and familiar technology. *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Also, Mistr, Jr. does not specifically teach determining whether a user has overridden switching the device or delivery point to the selected power source; and that said sending one or more signals to switch the device or delivery point to the selected power source is conducted whenever the user has not overridden switching the device or delivery point to the selected power source.

Aasen et al. teaches a method and system for selecting a power source to a device, comprising: (a) analyzing market and operational data related to the two or more available power sources, and the device or delivery point; (b) selecting the power source for the device or delivery point from the two or more available power sources based on a set of financial parameters; and (c) sending one or more signals to switch the device or delivery point to the selected power source whenever the device or delivery point is not already connected to the selected power source, wherein system control can be implemented via a manual mode, thereby suggesting "overridden" feature (C. 6, L. 27-35; C. 10, L. 55-59; C. 15, L. 58 - C. 16, L. 22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mistr, Jr. to include determining whether a user has overridden switching the device or delivery point to the selected power source, as suggested in Aasen et al., because it would advantageously allow to reprogram the system for business benefit. Furthermore, in this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. *See Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (*KSR*, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a

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finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Claims 4, 33 and 69. Aasen et al. teaches updating a display (Fig. 3).

Claims 5, 18, 19, 34-36 and 70. Mistr, Jr. teaches receiving market and operational data related to the two or more available power sources, and the device or delivery point (C. 13, L. 6-11, 21, 31-32; C. 17, L. 12-14).

Claims 6 and 71. Mistr, Jr. teaches repeating steps (a), (b) and (c) (monitoring said market and operational data in real time indicates "repeating" feature; C. 13, L. 31-37).

Claims 7, 8, 37, 38, 72 and 73. Mistr, Jr. teaches repeating steps (a), (b) and (c) (monitoring and calculating in real time), thereby suggesting that said repeating of said steps is conducted periodically. The motivation to modify the reference would be to employ the low cost slow processors and network connection.

Claims 9-12, 39-42, 74-77. Mistr, Jr. teaches said method and system, wherein the market and operational data is selected from the group consisting of historical operating data, current operating data, contract data, market data and financial data.

Claims 13, 43 and 78. Aasen et al. teaches that the one or more signals are manually sent or implemented.

Claims 15, 45, 80. Mistr, Jr. teaches said method and system, wherein the one or more available power sources is an electricity source selected from the group consisting of one or more electrical network connections, one or more combustion turbine generators, one or more steam turbine generators, one or more batteries, one or more fuel cells, one or more solar cells, one or more wind generators, one or more

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biomass generators and one or more hydroelectric generators.

Claims 16, 46 and 81. Mistr, Jr. suggests that the one or more available power sources is a mechanical source selected from the group consisting of one or more engines, one or more motors, one or more motor/generators and one or more turbines.

Claims 17, 47 and 82. Mistr, Jr. suggests that the device is selected from the group consisting of a compressor and a pump.

Claims 18, 19, 48, 49, 83 and 84. Mistr, Jr. suggests multi-source systems.

Response to Arguments

Applicant's arguments filed 05/12/2008 have been fully considered but they are not persuasive.

Applicant argues that Mistr, Jr. does not specifically teach that said two or more available power sources comprise two or more mechanical sources.

In response to the Applicant's argument it is noted that Mistr, Jr. discloses the use of mechanical power source/power generator as a power source (Fig. 1, item 35). Accordingly, it would have been prima face obvious to one having ordinary skill in the art at the time the invention was made to modify Mistr, Jr. to include said two or more available power sources (Fig. 1 items 35 and 36) comprise two or more mechanical sources, as suggested in Mistr, Jr., because one of ordinary skill in the art would have recognized that applying the known technique - a power generator/mechanical source, as evidenced by Mistr, Jr. would have yielded predictable results and resulted in an improved system. It would have been recognized that applying additional power generator/mechanical source to Mistr, Jr. would have yielded predictable results

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because the level of ordinary skill in the art demonstrated by the reference applied shows the ability to incorporate such power generator/mechanical source. Further, applying additional power generator/mechanical source to Mistr, Jr. would have been recognized by one of ordinary skill in the art as resulting in an improved system that would allow more reliable operation as using well known and familiar technology. *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

The remaining applicant's arguments essentially repeat the arguments presented above; therefore, the responses presented by the examiner above are equally applicable to the remaining applicant's arguments.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Igor N. Borissov/

Primary Examiner, Art Unit 3628

01/31/2009